ORIGIN OF DUTY NOT TO CAUSE HOMICIDE BY AN OMISSION. — In cases of homicide by an omission, rather than by a positive act, the criminal law has not yet definitely settled the nature of the defendant's duty. One way in which a legal duty may originate is illustrated in the recent English case of *Rex* v. *Pitwood*, 19 T. L. R. 37. The case is peculiarly interesting, since on the facts it directly overrules *Regina* v. *Smith*, 11 Cox C. C. 210. It holds that where, through a gate-keeper's negligent failure to close the gates, a person on the track is killed by a train the gate-keeper is guilty of manslaughter. The court argues that the defendant's criminal liability grew out of the contractual duty existing between himself and the railroad. The decision seems to be sound, and several other cases seem to adopt a similar view of the origin of the legal duty. *Regina* v. *Lowe*, 3 C. & K. 123; *Regina* v. *Hughes*, 7 Cox C. C. 301.

The legal duty in cases of this kind may arise in at least three ways. The first of these is illustrated by the principal case. Secondly, the duty may be imposed by statute. *Regina* v. *Downes*, 13 Cox C. C. 111. See *Regina* v. *Middleship*, 5 Cox C. C. 275. Thirdly, the weight of authority seems to hold that whenever a person has undertaken to perform any act, even gratuitously, so that others in reliance thereon have changed their position, a legal duty arises toward them. *Regina* v. *Marriott*, 8 C. & P. 425; *United States* v. *Knowles*, Fed. Cas. 15, 540. *Contra*, *Regina* v. *Shepherd*, 9 Cox C. C. 123. The principal case probably comes within this class also. In fact the element of reliance would seem to be present in most of the cases where the duty is regarded as arising from the contract. This third rule is subject to two extensions. Where one person relying on the defendant has placed another in a position of dependence on him, a duty arises. For example, if in the principal case a father, relying on the defendant, had driven on the crossing with his child, the defendant would be responsible for the child's safety independently of the contract. There seem to be no cases directly covering this point, but it falls within the spirit of the rule. Secondly, where the injured party is incapable of reliance, but his position has been changed by the defendant in pursuance of some undertaking to protect him. This covers undertakings to care for idiots and very young children. The cases are in conflict on this point, but the better view seems to favor the defendant's liability, since he has by his own act changed the injured party's position and assumed responsibility for his safety. *Regina* v. *Nicholls*, 13 Cox C. C. 75; *contra*, *Rex* v. *Smith*, 2 C. & P. 449.

The only cases of liability for manslaughter from an apparent omission which are not included in one of the classes suggested seem to be those where a man has undertaken to control a dangerous force. He then must not negligently allow it to injure anyone. See WHARTON, HOM., § 87. Such cases are nearly akin to those where there has been some positive act. The person by taking the dangerous force into his control has made it his, and is responsible for it.

The adoption in full of these rules of legal duty would not greatly extend criminal liability in view of the standards of negligence in criminal law. The criminal law requires a man to act with no greater degree of care than a person of his standard of capacity would consider proper. Further, to render a defendant liable, such reckless negligence must be proved as to show a criminal state of mind. *Regina* v. *Noakes*, 4 F. & F. 920. Subject to such limitations, broad standards of responsibility may safely be adopted.